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07/11/2001

Felix Achille

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The Dow Chemical Company  
Intellectual Property Section  
P.O. Box 1967  
Midland, MI 48641-1967

EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* FELIX ACHILLE

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Appeal 2008-4914  
Application 09/903,362  
Technology Center 1700

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Decided: September 24, 2008

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Before THOMAS A. WALTZ, PETER F. KRATZ, and  
ROMULO H. DELMENDO, *Administrative Patent Judges*.

WALTZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the Primary Examiner's final rejection of claims 1-6, 8-11, and 32-40, which are the only claims pending in this application. We have jurisdiction pursuant to 35 U.S.C. § 6(b).

According to Appellant, the invention is directed to an extruded, melt-mixed thermoplastic resin/superabsorbent polymer blend composition and its method of preparation (App. Br. 2-3). Further details of the invention may be seen from illustrative independent claims 1 and 10, as reproduced below:

1. An extruded, melt-mixed thermoplastic resin/superabsorbent polymer blend composition consisting essentially of
  - (c) one or more superabsorbent polymer and
  - (d) one or more thermoplastic resin comprising a functional group which interacts ionically or covalently with (a)[sic, (c)], the resin being a polyacrylic acid, ethylene and acrylic acid copolymer, ethylene, t-butylacrylate and acrylic acid terpolymer, ethylene and methacrylic acid copolymer, ionomers of ethylene and methacrylic acid copolymers, ethylene, vinyl acetate and carbon monoxide terpolymer, ethylene and carbon monoxide copolymer, ethylene, acrylic acid and carbon monoxide terpolymers, ethylene, n-butylacrylate and carbon monoxide terpolymer or blends thereof.
10. A method for preparing an extruded thermoplastic superabsorbent polymer blend composition comprising the step of extruding a melt-mixed combination of:
  - (a) one or more superabsorbent polymer and
  - (b) one or more thermoplastic resin comprising a functional group which interacts ionically or covalently with (a) the resin being a polyacrylic acid, ethylene and acrylic acid copolymer, ethylene, t-butylacrylate and acrylic acid terpolymer, ethylene and methacrylic acid copolymer, ionomers of ethylene and methacrylic acid copolymers, ethylene, vinyl acetate and carbon monoxide terpolymer, ethylene and carbon monoxide copolymer, ethylene, acrylic acid and carbon monoxide terpolymers, ethylene, n-butylacrylate and carbon monoxide terpolymer or blends thereof.

The Examiner has relied on the following prior art reference as evidence of unpatentability:

Korpman

4,318,408

Mar. 9, 1982

#### ISSUES ON APPEAL

Claims 10-11 stand rejected under 35 U.S.C. § 102(b) as anticipated by Korpman (Ans. 3).

Claims 1-6, 8-11, 32-33, and 36-40 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Korpman (Ans. 4).<sup>1</sup>

With regard to the § 102(b) rejection, Appellant contends that Korpman describes the matrix as an elastomer, while the present invention is made from a thermoplastic resin and does not contain an elastomer (App. Br. 6). Appellant contends that the words “elastomer” and “thermoplastic” are not synonymous, and presents definitions of these terms (App. Br. 6-8).

With regard to the § 103(a) rejection, Appellant presents the same contentions (App. Br. 8-10).

The Examiner contends that Korpman discloses an extruded thermoplastic superabsorbent polymer composition and its method of preparation (Ans. 3). The Examiner further contends that the thermoplastic elastomer disclosed by Korpman is both thermoplastic and elastomeric, and thus falls within the scope of the claimed “thermoplastic polymers” (Ans. 6-7).

Accordingly, we determine the following issues presented from the record in this appeal: has Appellant established that the Examiner committed reversible error in construing component (b) of claim 10 and component (d) of claim 1 as including the thermoplastic elastomer described by Korpman? We determine that Appellant has established that the Examiner committed reversible error in the rejections of claims 1 and 10 on appeal. Therefore, we cannot sustain the Examiner’s rejection of claims 10-11 under § 102(b)

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<sup>1</sup> Claims 34-35 are objected to by the Examiner as being dependent on a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims (Ans. 5). Appellant wishes to defer any amendments (App. Br. 6). Accordingly, there is no rejection of claims 34-35 before this merits panel for review in this appeal.

over Korpman essentially for the reasons stated in the Brief, as well as those reasons presented below. We also cannot sustain the Examiner's rejection of claims 1-6, 8-11, 32, 33, and 36-40 under § 103(a) over Korpman for the same reasons, as stated below. Thus, the decision of the Examiner is REVERSED.

### OPINION

#### *A. The Rejection under § 102(b)*

The Examiner has rejected claims 10-11 under § 102(b) as anticipated by Korpman (Ans. 3).

The Examiner finds that Korpman discloses an extruded thermoplastic superabsorbent polymer composition comprising a superabsorbent polymer, such as an acrylate polymer, acrylate modified polysaccharides, and crosslinked carboxymethyl cellulose, and a thermoplastic elastomeric polymer, such as block copolymers of styrene, butadiene, ethylene, butylene, and propylene (Ans. 3, 6).

Appellant argues that Korpman describes the matrix in his superabsorbent product as comprising a thermoplastic elastomeric block copolymer, not a thermoplastic resin as claimed (App. Br. 6).

We determine that the Examiner has failed to provide any factual basis to support the § 102(b) rejection over Korpman. We determine that independent claim 10 is directed to a method that requires a *particular* thermoplastic resin selected from a group of nine specified copolymers/terpolymers. We also determine that the Examiner has not pointed to any disclosure in Korpman describing any of these nine copolymers/terpolymers with sufficient specificity to constitute anticipation within the meaning of § 102. Although the Examiner may be correct that the

thermoplastic elastomers taught by Korpman are “thermoplastic polymers” as this term is used in the claims (Ans. 7), the Examiner has not shown any description in Korpman of one or more of the *specific* thermoplastic resins required by claim 10 on appeal. Therefore, we cannot sustain the rejection of claims 10-11 under § 102(b) over Korpman.

*B. The Rejection under § 103(a)*

The Examiner has rejected claims 1-6, 8-11, 32-33, and 36-40 under § 103(a) as obvious over Korpman (Ans. 4).

The Examiner makes the same factual findings as discussed above (Ans. 4). Appellant presents the same argument as discussed above (App. Br. 8).

We determine that independent claim 1 contains the requirement that the “thermoplastic resin” of the blend composition must be one or more of nine specified resin copolymers/terpolymers.<sup>2</sup> We determine that the Examiner has failed to provide any factual basis to support this rejection, with the Examiner finding, as discussed above, that the thermoplastic elastomeric resin taught by Korpman includes block copolymers of styrene, butadiene, ethylene, butylene, and propylene (Ans. 4). We determine that the Examiner has not pointed to any disclosure in Korpman disclosing or suggesting one or more of the claimed thermoplastic resins. Therefore, for this reason and the reasons discussed above, we also cannot sustain the rejection of claims 1-6, 8-11, 32-33, and 36-40 under § 103(a) over Korpman.

*C. Summary*

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<sup>2</sup> We note that this requirement is also contained in independent claims 10 (directed to the method of preparing the blend composition) and 32 (directed to an extruded thermoplastic superabsorbent polymer blend composition).

Appeal 2005-4914  
Application 09/903,362

The decision of the Examiner is reversed.

REVERSED

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THE DOW CHEMICAL COMPANY  
INTELLECTUAL PROPERTY SECTION  
P.O. BOX 1967  
MIDLAND, MI 48641-1967